

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Rama Communications, Inc.)	File Number EB-08-TP-0186
)	
Licensee of station WLAA)	NAL/Acct. No. 200832700017
Ocoee, FL 34761)	
)	
Facility ID Number: 55006)	FRN: 000-50080-16

MEMORANDUM OPINION AND ORDER

Adopted: December 22, 2008

Released: December 24, 2008

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“MO&O”), we deny the petition for reconsideration filed by Rama Communications, Inc. (“Rama”) of the *Forfeiture Order* issued October 17, 2008.¹ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$16,000 for Rama’s willful and repeated violations of Section 11.35(a) and 73.3526 of the Commission’s Rules.² The noted violations involved Rama’s failure to maintain an operational Emergency Alert System (“EAS”) and failure to maintain and make available a complete public inspection file.

II. BACKGROUND

2. On May 9, 2008, in response to a complaint, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”), accompanied by the station’s general manager, conducted an inspection of AM radio station WLAA’s main studio in Ocoee, Florida during normal business hours. The agents observed that the station was not monitoring the stations assigned to it by the state EAS plan. The agents also observed that the EAS equipment was not operational. The general manager attempted to conduct an EAS test, but the test was not broadcast. The general manager conducted a second test after removing a jammed printer tape from the unit. However, the second test also was not broadcast. The general manager was unable to determine the cause of the EAS equipment malfunction during the course of the inspection. The station maintained no EAS logs, and there were no other records showing that an EAS test had ever been sent or received by the station or indicating how long the unit had been non-operational.

3. During the inspection on May 9, 2008, during normal business hours, the agents also requested to inspect the station’s public inspection file. The public inspection file did not contain any

¹ *Rama Communications, Inc.*, Forfeiture Order, DA 08-2296 (Enf. Bur. South Central Region October 17, 2008) (“*Forfeiture Order*”).

² 47 C.F.R. §§ 11.35(a), 73.3526.

quarterly issues programs lists. The general manager was only able to provide a file of flyers and announcements of local events.

4. On August 4, 2008, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Rama in the amount of sixteen thousand dollars (\$16,000), for the apparent willful and repeated violation of Sections 11.35(a) and 73.3526 of the Rules.³ Rama failed to submit a response to the *NAL*. On October 17, 2008, the Bureau released a no response *Forfeiture Order*, imposing a \$16,000 forfeiture. On November 17, 2008, Rama filed a petition for reconsideration requesting reduction or cancellation of the forfeiture.

III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining Rama's petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require.⁷

6. We find that Rama has presented no arguments that warrant cancellation or reduction of the forfeiture and deny its petition for reconsideration. In its petition for reconsideration, Rama claims that it "inadvertently" failed to respond to the *NAL*.⁸ A petition for reconsideration, which relies on facts not previously presented to the designated authority, may be granted only if: (1) the designated authority determines that consideration of the facts relied on is required in the public interest; (2) the petition relies on facts which relate to events which occurred or circumstances which have changed since the last opportunity to present such matters; or (3) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters.⁹ All of the information provided in the petition for reconsideration was available and known to Rama when it was provided an opportunity to respond to the *NAL*. Moreover, we do not find that the public interest requires consideration of the facts alleged in the petition for reconsideration.

7. Rama alleges that its EAS equipment was operational on May 9, 2008, because its new engineer repaired the equipment after the agents' inspection. However, it is undisputed that the station was not monitoring its assigned stations and was unable to send an EAS test *during* the inspection. Although the engineer may have "fixed the equipment in ten minutes" sometime after the inspection,¹⁰ post-inspection corrective action taken to come into compliance with the rules is expected, and does not

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832700017 (Enf. Bur., Tampa Office, August 4, 2008) ("*NAL*").

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ See Rama petition for reconsideration at 2.

⁹ 47 C.F.R. § 1.106(c).

¹⁰ See Exhibit 3, page 10 of Rama's petition for reconsideration.

nullify or mitigate any prior forfeitures or violations.¹¹ Although Rama asserts in its petition that its logs were located next to the EAS equipment, Rama failed to produce any evidence that the station's EAS had ever been operational *at the time of the inspection* and did not attach copies of the logs in its petition. Rama also failed to explain in its petition why such records were not produced *during* the inspection. Moreover, Rama states that "someone attempted to correct a previous short in the equipment by tampering with the wires" which created the EAS malfunction, but it failed to state when the short or tampering took place.¹² Rama cites *Surrey Front Range Ltd. Partnership*, 71 RR 2d 882 (FOB 1992) in support of its request for reduction of its EAS violation. The proposed forfeiture in that case was reduced based on the violator's history of compliance with the rules. In the instant case, Rama willfully and repeatedly failed to maintain operational EAS equipment and does not have a history of compliance with the Rules, so we do not find the cited case dispositive. Rama also states that its previous engineer fell ill in February 2008, a few months before the inspection, and was unable to perform his duties. However, where lapses in compliance occur, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.¹³

8. In addition, Rama alleges in its petition for reconsideration that it maintained a complete public inspection file at the main studio/corporate headquarters in Orlando, Florida. However, on May 9, 2008, agents from the Tampa Office drove to the corporate headquarters in Orlando, Florida after inspecting the transmitter site and requested to inspect the public inspection file at that location. The general manager of WLAA provided the agents the station's public inspection file, but the file did not contain the required quarterly issues programs lists. Although the *NAL* failed to specify that the request to inspect the public inspection file was made at the station's corporate headquarters, the agents' notes from the inspection make clear that that is where the request was made. Accordingly, on May 9, 2008, Rama failed to make available a complete public inspection file, *i.e.*, the required issues/programs lists, and was unable to produce any evidence that the required lists had ever been maintained at the corporate headquarters/main studio.

9. Finally, Rama requests a reduction or cancellation of the forfeiture, because payment of the forfeiture would pose an undue financial burden. Rama notes that it has already received two Notices of Apparent Liability for Forfeiture and is paying the forfeitures in installments. Rama asserts this additional forfeiture will pose an even greater hardship on the station, but it failed to provide documentation of its finances to support its claim. Because Rama has not provided any documentation of its finances, we are unable to determine whether a reduction of the proposed forfeiture on the basis of inability to pay would be appropriate.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁴ and Section 1.106 of the Commission's Rules,¹⁵ that the Petition for Reconsideration filed by Rama Communications, Inc. **IS DENIED**.

¹¹ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹² See *supra* note 10.

¹³ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

¹⁴ 47 U.S.C. § 405.

¹⁵ 47 C.F.R. § 1.106.

11. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁶ Rama Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for violation of Sections 11.35(a) and 73.3526 of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Rama will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

13. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Rama Communications, Inc. at its address of record and to its counsel, Todd A. Steiner, Law Offices of Putbrese, Hunsaker & Trent, P.C., 200 South Church Street, Woodstock, VA 22664.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Deputy Chief, Enforcement Bureau

¹⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35(a), 73.3526.

¹⁷ 47 U.S.C. § 504(a).